IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 703 OF 2006
IN
REVIEW PETITION (ST.) NO. 3139 OF 2006
IN
CIVIL APPLICATION NO. 2147 OF 2003
IN
WRIT PETITION NO. 572 OF 2003

The Principal,
Rizvi College of Arts, Science
and Commerce and another. ... Petitioners.

V/s.

Hasina Hafiz Shaikh
and others. ... Respondents.

G.S.Hegde with M.J.Shetty for the applicants.

Dhananjay Halwai i/b. M.P.Vashi Associates
for respondent No.1.

R.A.Rodrigues for respondent No.2.

CORAM: V.C.DAGA, J.

DATED: 16th March 2006.

P.C.:

. By consent of parties, civil application No.703/2006 is allowed. Delay in taking out review application is condoned. Review petition is taken up for hearing forthwith.

2. Heard learned counsel for the rival parties. Perused review petition.

3. Before touching the review application, it is necessary to take stock of the assurance given to this Court by the petitioners, while obtaining interim relief; which is recorded in the second para of the order of this Court dated 31st March,2003.

> " The learned counsel for the petitioner states that if any future vacancy occurs and work load is available, petitioner's case will be considered sympathetically."
>
> (Emphasis supplied)

4. When this Court noticed that the above solemn assurance given to this Court was breached, this Court had no option but to vacate the above interim order granted by this Court in terms of prayer clause (b). The reasons recorded for vacating interim relief are to be found in paras-4 and 5 of the said order, which read thus:-

> "4. In the above view of the matter, it was expected on the part of the petitioner, to appoint respondent No.1 as soon as vacancy arose subject to the result of the petition. It was not necessary for them to advertise and invite applications in the peculiar facts and circumstances of this case. It was taken on record at the instance of the petitioner, while admitting this petition that, in future, in the event of any vacancy, the case of the petitioner would be considered.

> 5. It is to be seen that there is absolute stay from 31st March, 2003. Since then respondent No.1 is out of service. This interim order was passed on the solemn assurance given by the management. However, management failed to maintain that assurance and chose to issue an advertisement and invite applications. In these circumstances, interim relief obtained by the petitioner is liable to be vacated in view of breach of the solemn assurance given to this Court. Accordingly, interim relief granted by this Court in terms of prayer clause (b) stands vacated. Petitioner is directed to reinstate respondent No.1 subject to result of the petition.

The review petitioners are seeking review of the above order dated 16th December, 2005 passed by this Court in Civil Application No.2147/2003.

Submissions :

5. Mr. Hegde, the learned counsel for the review petitioners submit that the respondent No.1 was not eligible and hence she was rightly not selected. He further submits that in absence interim relief, petition itself would be rendered infructuous. He tried to advance all those submissions which were available when the petition was called out for hearing and order under review was passed.

6. The submissions made by Mr.Hegde are misplaced. Had the respondent No.1 not eligible, then it was not necessary for the petitioners to assure this court that her case would be considered sympathetically. It was not necessary to call her for interview. How a person could be invited for interview and considered if he/she was not eligible for the post.

7. It is, thus, clear that assurance given to this Court was breached by the petitioners with full knowledge. As such interim relief operating in favour of the petitioners came to be rightly withdrawn. No case is made out to entertain this review petition. Same is liable to be dismissed.

7A. At this stage, Mr.Hegde submits that the employment of respondent No.1 shall create number of administrative problems. The submission made in this behalf is also misplaced. However, I deem it necessary to make reference to some of the decided cases involving similar issues; and solutions found out by this Court from time to time, which will be helpful to the petitioners to deal with the situation. This Court had an occasion to deal with the cases similar to that of

the present respondent No.1. In **Vishwaprakash v. State of Maharashtra**, 2003 (2) Mh.L.J. 176, the Division Bench of this Court at Aurangabad was pleased to hold that Government Resolution dated 18th October, 2001 is just and legal except clause 2(b) thereof.

8. The above Resolution protects the services of the Lecturers, who were appointed between the period from 19th September, 1991 to 11th December, 1999, and without possessing the qualifications of NET/SET. It required them to obtain the necessary qualifications on or before December, 2003. It further stipulates that if they fail to acquire those requisite qualifications, within the said period, then they would be only entitled to be placed in the pay scale of Rs.8,000-13,500 till their superannuation. In addition, they shall not be entitled for promotion,senior grade or selection grade. Those who would passed the NET/SET examination, within the stipulated extended period, would be entitled for senior/selection grade from that date and their seniority will be also counted accordingly. Such of those Lecturers, who were employed under the Government Colleges, their continuation would be

in consultation with the Maharashtra State Public Service Commission.

9. However, the aforesaid Government Resolution further stipulates that those Lecturers; who did not possess the NET/SET qualifications and have been appointed after 11th December, 1999 shall not be given the benefit of extended period to acquire requisite qualifications and their services are liable to be discontinued before the completion of the probationary period.

10. The State Government by another Resolution dated 18th October, 2001 has granted some concessions/ protection to those who have been appointed during the period from 19th September, 1991 to 11th December, 1999. However, such protection has been denied to those who have been appointed after 11th December, 1999. Those who faced the imminent possibility of removal from service had approached this Court by way of writ petition.

11. The Division Bench while dealing with the writ petitions was pleased to direct that the

services of persons should not be terminated and their specific cases should be referred by the University to the University Grant Commission (UGC) to seek prior approval to regularise required requirements including all questions and contentions leading to the relaxation in relation to their eligibility i.e., passing of NET and SET examinations. However, no time limit was set for the UGC to take decision.

12. The operative part of the directions issued by the Learned Division Bench reads as under:-

> "..... We also hold that the cases of candidates appointed from 12th December, 1999 till 18th the first proviso to clause 2 of the 1991 Regulations as well as 2000 Regulations before their services are sought to be terminated by the respective universities and/or colleges/institutions.

13. The College Managements, thus, were directed not to terminate services of the candidates appointed from 12th December, 1999 till 18th October, 2001 until the UGC takes decision as directed by the Bench. The respective colleges were directed to forward their cases to the University for being referred to U.G.C., for their consideration.

14. The batch of some other petitions came up for hearing before the Division Bench presided over by Shri V.G.Palshikar, J. The learned Division Bench, vide its order dated 18th April, 2002 passed in Writ Petition No. 1172/2002 (**Ms.Jadhav U.N. & ors. v. The State of Maharashtra & ors.**), was pleased to follow the above judgment in the case of **Vishwaprakash V/s. State of Maharashtra** (cited supra).

15. On third occasion, again similar controversy came before another Division Bench at Mumbai presided over by Shri C.K.Thakker, C.J. (as he then was). The learned Division Bench, vide its order dated 28th November, 2003, passed in Writ Petition No.5688/2003 (**Shri Bobade Ramesh Shivaji v. The State of Maharashtra**), following both the Division Bench Judgments referred to hereinabove, was pleased to issue directions to the college management to forward applications of each candidate to the University and, in turn, the University was directed to forward all those proposals for relaxation to the UGC and the UGC was directed to take an appropriate decision in that behalf. The order of termination was set aside.

16. In the above backdrop, the petitioners can conveniently follow the same route.

17. In order to solve administrative difficulty of the College Management (review petitioners), if any, I permit the petitioners to forward the proposal of respondent No.1 to the University to seek relaxation and/or regularisation from the UGC.

18. In turn, the University is directed to forward the application of the College, to the UGC, for its consideration as the University has done in similar cases in the past.

19. Needless to mention that since the UGC is not party to this review petition; no directions can be issued to UGC at this stage. However, I have no manner of doubt that the UGC will take a proper view in the matter and consider the proposal of the petitioners and application of respondent No.1 in its proper perspective considering the directions given by this Court from time to time in the cases referred to hereinabove.

20. Considering the question involved in the petition, it would be open for the parties to get the writ position disposed of by moving for early or fixed date hearing. No useful purpose would be served by keeping petition pending for years together.

21. With the above directions, review petition stands disposed of in terms of this order with no order as to costs.

(V.C.DAGA, J.)